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# Children's Rights and the Juvenile Justice System in Estonia

## 1. Introduction

The history of juvenile justice systems in various European and North American countries shows oscillation between the welfare-based and the punitive model of responding to juvenile offences. Both models have positive and negative sides; neither is perfect<sup>\*1</sup>. In both models, the most negative effect of the juvenile justice system is its stigmatising and excluding impact on the youth. That is why alternative measures are needed to prevent and react to delinquent behaviour. Since the UN Convention on the Rights of the Child (UNCRC) entered into force, in September 1990, a new, so-called rights-focused approach has been introduced in treatment of juvenile offenders. According to the UNCRC, juvenile offenders are children and therefore are subject to the specific rights specified in that convention. B. Goldson and J. Muncie note that, with its coming into force in 1990, the UNCRC bolstered the core provisions contained within the 'Beijing Rules', the 'Riyadh Guidelines', and the 'JDL Rules' / 'Havana Rules'.<sup>\*2</sup> The articles of the UNCRC with the greatest relevance for juvenile justice systems are these:

Article 3: In all actions concerning children [...], the best interests of the child shall be a primary consideration.

Article 12 (1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 12 (2): For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16 (1): No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence [...].

<sup>1</sup> See, e.g., John A. Winterdyk (ed.). *Juvenile Justice: International Perspectives, Models and Trends*. CRC Press 2015. – DOI: <https://doi.org/10.1201/b17528>; John Muncie. *Youth & Crime*, 3rd ed. Los Angeles; London; New Delhi; Singapore; Washington, DC: SAGE 2015; Cliff Roberson. *Juvenile Justice: Theory and Practice*. CRC Press 2010.

<sup>2</sup> B. Goldson, J. Muncie. Article in *International Journal of Law, Crime and Justice* 40 (2012), pp. 47–64 DOI: <https://doi.org/10.1016/j.ijlcrj.2011.09.004>.

Article 37(a): No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...]

Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

Article 37(c): Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so [...]

Article 37(d): Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40 (1): States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 40 (3): States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.\*<sup>3</sup>

Two important legal documents in provision of foundations for juvenile justice based on the rights of a child are those titled 'European Rules for Juvenile Offenders Subject to Sanctions or Measures' (Council of Europe, 2009) and 'Guidelines for Child Friendly Justice' (Council of Europe, 2010), adopted by the Committee of Ministers. In addition, the *Handbook on European Law Relating to the Rights of the Child*<sup>4</sup>, jointly prepared by the European Union Agency for Fundamental Rights (FRA) and the Council of Europe, together with the Registry of the European Court of Human Rights, provides a useful framework for the European law for developing child-friendly justice and protection of those offenders who have not reached the age of majority from ill treatment. Collectively, the United Nations and Council of Europe human-rights standards, treaties, rules, conventions, and guidelines offer a solid base for globalised human-rights-compliant and child-friendly juvenile justice.\*<sup>5</sup>

However, as Goldson and Muncie note, 'the UNCRC is ultimately permissive and breach attracts no formal sanction. In this sense, it may be the most ratified of all international human rights instruments but it also appears to be the most violated, particularly with regard to juvenile justice and, moreover, such violations occur within a context of relative impunity'.\*<sup>6</sup> To some extent, the problems with application of rights-based and child-friendly juvenile justice are related to differences in definition and in interpretation of the UNCRC articles. Special attention is needed when the rights of a child deprived of liberty are at issue. Research demonstrates that deprivation of liberty and any kind of isolation of a child from his or her natural environment have a serious negative impact on the development of that child and stand in contradiction to the principle of the best interests of the child\*<sup>7</sup>. Well-being at any stage in a child's life supports his or her development and,

<sup>3</sup> United Nations General Assembly, 1989. United Nations Convention on the Rights of the Child. New York: United Nations.

<sup>4</sup> See Chapter 11, 'Children's rights within criminal justice and alternative (non-judicial) proceedings', pp. 195–211.

<sup>5</sup> B. Goldson, J. Muncie (see Note 2), p. 50.

<sup>6</sup> *Ibid.*, pp. 51–52.

<sup>7</sup> J. Dmitrieva et al. Arrested development: The effects of incarceration on the development of psychosocial maturity. – *Development and Psychopathology* 24 (2012), pp. 1073–1090. – DOI: <http://dx.doi.org/10.1017/S0954579412000545>; G. Gaes, S.D. Camp. Unintended consequences: Experimental evidence for the criminogenic effect of prison security level placement on post-release recidivism. – *Journal of Experimental Criminology* 5 (2009) / 2, pp. 139–162. DOI: <http://dx.doi.org/10.1007/>

thereby, future well-being<sup>\*8</sup>. More than 25 years of visits of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the places of their detention shows that children deprived of their liberty are at higher risk of ill treatment than adult offenders are<sup>\*9</sup>. Beside pointing to negative effects on a child's development on personal level, evidence from research shows that incarceration has little positive effect in terms of reducing crime (see Mulvey 2011<sup>\*10</sup>; Myers 2003<sup>\*11</sup>). Statistics indicate that 70–80% of young people are re-arrested within three years once they have been incarceration (Mendel 2011<sup>\*12</sup>).

When children are placed in detention, they should benefit from special rights and guarantees. International legal acts and regulations include several mechanisms (e.g., national and international monitoring of detention locations and the right of inmates to present complaints) and provide for special training for practitioners working with young offenders, all supposed to prevent ill treatment in the juvenile justice system. Wouter Vandenhoele emphasises the 'three "P"s' as central rights of the child in a juvenile justice system – the right to protection, to provision, and to participation<sup>\*13</sup>. The aim with this paper is to give an overview of the situation of how well the rights of Estonian children in detention are honoured and what main tendencies are present in everyday practice. The results presented are based on findings from two international action research projects.

## 2. Juvenile justice in Estonia

With regard to the years since the country regained independence, the building of, and reforms to, the juvenile justice system in Estonia could be characterised as oscillating between adult-like punishment in cases of serious crime and soft response plus rehabilitation in cases of mundane ('light') crime. There are neither special juvenile courts nor family courts – these criminal cases are processed in the general court system. The Estonian Penal Code, the Code of Criminal Procedure, and the Imprisonment Act regulate the detention of children. The only legal act specific to juvenile justice is the Juvenile Sanctions Act (JSA) (which came into force on 1 September 1998), which regulates, among other elements, the function of juvenile committees – an alternative, non-judicial organ dealing with young offenders. Juvenile committees are formed by county governors and work within the limits of local cities or rural municipalities. Members of these committees are experts in the areas of education, social welfare and health care, police operations, and probation. A secretary of the committee is employed and paid by the local government.<sup>\*14</sup> The aim with the JSA and juvenile committees is to keep minors out of criminal proceedings as long as possible, and the entire system is built as an alternative to detention that can be applied in response to unlawful activity of children. If the seriousness of the case and the particulars of the child offender (age, psychosocial characteristics, family background, etc.) so dictate, the court may direct the minor's case to a juvenile committee. However, nearly 20 years of juvenile committees' work experience revealed this mechanism's weak capability to help

s11292-009-9070-z; B. Holman et al. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Congregate Facilities*. Baltimore: Annie E Casey Foundation 2006; S. Koffman et al. Impact of a comprehensive whole child intervention and prevention program among youths at risk of gang involvement and other forms of delinquency. – *Children & Schools* 31 (2009) / 4, pp. 239–245. – DOI: <https://doi.org/10.1093/cs/31.4.239>; I. Lambie, I. Randell. The impact of incarceration on juvenile offenders. – *Clinical Psychology Review* 33 (2013), pp. 448–459. – DOI: <http://dx.doi.org/10.1016/j.cpr.2013.01.007>; R.A. Mendel. *No Place for Kids: The Case for Reducing Juvenile Incarceration*. Baltimore: Annie E. Casey Foundation 2011 (available at <http://www.aecf.org/m/resourcedoc/aecf-NoPlaceForKidsFullReport-2011.pdf>, most recently accessed on 12 March 2017).

<sup>8</sup> For discussion of the connections among general human rights, the present well-being of the child in the here and now, and future well-being, see Tom D. Campbell. The rights of the minor: As person, as child, as juvenile, as future adult. – *International Journal of Law and the Family* 6 (1992), pp. 1–23. – DOI: <https://doi.org/10.1093/lawfam/6.1.1>.

<sup>9</sup> See I. Lambie, I. Randell (see Note 7), pp. 452–453.

<sup>10</sup> E.P. Mulvey et al. An examination in dynamic risk of offending over time among serious juvenile offenders. – *Journal of Criminal Justice* 45 (2016), pp. 48–53. – DOI: <https://doi.org/10.1016/j.jcrimjus.2016.02.008>.

<sup>11</sup> D.L. Myers. The recidivism of violent youths in juvenile and adult court: A consideration of selection bias. *Youth Violence and Juvenile Justice* 1 (2003) / 1, pp. 79–101. – DOI: <http://dx.doi.org/10.1177/1541204002238365>.

<sup>12</sup> R.A. Mendel (see Note 7).

<sup>13</sup> W. Vandenhoele. Children's rights from a legal perspective: Children's rights law. – Wouter Vandenhoele et al. (eds), *Routledge International Handbook of Children's Rights Studies*. London, New York: Routledge 2015, pp. 27–42. – DOI: <https://doi.org/10.4324/9781315769530>.

<sup>14</sup> JSA, §12 (2).

young offenders keep away from crime.<sup>\*15</sup> Therefore, the whole legal framework of juvenile justice is now undergoing reorganisation, and according to the development plan, everything connected with children's life should belong to the realm of child protection<sup>\*16</sup>.

Juvenile crime has decreased considerably within the last 10 years: from 2,056 young offenders (263 per 10,000 members of the population in the relevant age band) in 2006 to 541 (114 per 10,000) in 2016<sup>\*17</sup>. The number of adolescent prisoners too declined: in 2006, there were 89 minors in prison, while there were 29 in 2016 (16 convicted and 13 on remand). In August 2014, when the research considered below took place, there were 36 adolescents in Estonian prisons. Also, the number of residents of closed-type special schools fell over the last decade: in 2005, there were 143 pupils at these special schools, and the equivalent number for 2012 was 67<sup>\*18</sup>.

### 3. Action grants

Starting in 2014, the authors participated in two projects under action grants financed by the EC. Both projects were led by Defence for Children International (DCI), a non-governmental children's-rights-focused movement with local organisations active in 47 countries, around the world. The aims for these projects were to assess the local situation and participate in development of a practical guide for monitoring places where children are deprived of their liberty<sup>\*19</sup> and the preparation of a handbook dealing with implementation of the UNCRC's Article 12 in day-to-day practice with juvenile offenders.

The first project's title is 'Children's Rights behind Bars. Human Rights of Children Deprived of Liberty: Improving Monitoring Mechanisms' (JUST/2013/JPEN/AG/4581), and the programme period was 2014–2016, with 14 EU member states' participation, under the leadership of DCI Belgium. Every country collected data and prepared a national report about the situation of the monitoring system related to institutions wherein children are deprived of liberty within its borders. The data sources in the project include relevant statistics, material from desk research on laws and regulations, site visits, 10 interviews with experts, an interview with a child, and non-recorded conversation with two young prisoners. The Estonian report was prepared by the authors of the present paper in late 2014<sup>\*20</sup>. Based on the materials in the national reports, a comparative overview of the situation in 14 EU countries was written by Marine Braun and Pierre-Yves Rosset (2015)<sup>\*21</sup>. On the basis of these documents, the above-mentioned practical guide was compiled<sup>\*22</sup>.

The second project, titled 'TWELVE – Promoting the Implementation of Article 12 of the CRC in the Juvenile Justice System' (JUST/2013/FRAC/AG/6099), took place in 2014–2016 under the leadership of the DCI Italy branch and with the participation of six EU countries<sup>\*23</sup>. In the course of the project, we engaged in several group conversations with Estonian practitioners working with young offenders. All told, 62 practitioners participated in these sessions, among them social workers from several local municipalities and NGOs, prosecutors, lawyers, police officers focusing on the youth, child-protection workers, youth

<sup>15</sup> See, e.g., I.-E. Rannala *Dialoogi olulisusest töös riskikäitumisega noortega. Alaealiste komisjonide näitel* ['About Significance of Dialogue in Work with Risk Behaving Youth: Based on Example of Juvenile Committees']. Tallinn: Tallinn University 2014 (PhD dissertation in social work).

<sup>16</sup> For more about this topic, see the Third and Fourth Periodic Report of the Republic of Estonia on the Implementation of the UN Convention on the Rights of the Child. Available at [http://vm.ee/sites/default/files/elfinder/article\\_files/report\\_of\\_estonia.pdf](http://vm.ee/sites/default/files/elfinder/article_files/report_of_estonia.pdf) (most recently accessed on 20 September 2017).

<sup>17</sup> K. Tamm. Alaealiste kuritegevus ['Adolescents' Crime']. – *Kuritegevus Eestis* ['Crime in Estonia']. Estonia: Justiitsministeerium (24) 2017.

<sup>18</sup> J. Salla et al. Safety of Children. – Dagmar Kutsar (ed.), *Child Well-being*. Tallinn: Estonian Statistics 2013, pp. 107–153.

<sup>19</sup> See the project homepage, <http://www.childrensrightrightsbehindbars.eu/> (most recently accessed on 20 September 2017).

<sup>20</sup> See the Estonian national report 'Children's rights behind bars – human rights of children deprived of liberty: Improving monitoring mechanisms', available at <http://www.childrensrightrightsbehindbars.eu/images/national-reports-2014/ESTONIA-FINAL-REPORT.pdf> (most recently accessed on 20 September 2017).

<sup>21</sup> The European overview document has been published at <http://www.childrensrightrightsbehindbars.eu/images/Childrens-Rights-Behind-Bars-A-European-Overview.pdf> (most recently accessed on 20 September 2017).

<sup>22</sup> For more about the project and the Practical Guide materials, see <http://www.childrensrightrightsbehindbars.eu/outputs/practical-guide> (most recently accessed on 20 September 2017).

<sup>23</sup> The members of the Estonian team were Anita Kärner, Dagmar Narusson, and (as national co-ordinator) Judit Strömpl, all from the Institute of Social Studies of the University of Tartu. More information about the project can be found at <http://www.defenceforchildren.it/projects/118-twelve-promoting-the-implementation-of-article-12-of-the-crc-in-the-juvenile-justice-system.html> (most recently accessed on 20 September 2017).



workers, secretaries of some juvenile committees, one representative from the Ministry of Justice, and the head of the Ombudsman's Office of the Department of Children. All interviews and group conversations were audio-recorded and later transcribed. During the field visits, field notes were taken. All these data were analysed by means of qualitative thematic analysis methods<sup>\*24</sup>. On the basis of the training sessions, the handbook for professionals working in the relevant domain in EU countries was developed<sup>\*25</sup>.

## 4. Findings and discussion

In Estonia, young offenders may be isolated in six distinct kinds of institution: 1) closed-type special schools for children with behavioural problems<sup>\*26</sup>, 2) special shelters for children with alcohol or drug addiction<sup>\*27</sup>, 3) closed-access departments of psychiatric hospitals, 4) welfare institutions for mentally disabled children, 5) the Youth Department of Viru Prison (boys) and of Tallinn Prison (girls), and 6) 'arrest houses' / 'arrest chambers'. In the event that unaccompanied children who are asylum-seekers are detained, they would be placed in a substitute home that is not a closed institution.<sup>\*28</sup> Some of the institutions are specifically youth institutions; others are special departments within 'adult' institutions where children are separated from adults. One of the first demands under international regulations for juvenile justice systems is that adolescents be separated from adult offenders. Estonia follows this principle in general, but there are still problems with this demand. At the arrest houses, for example, the placement of children is handled in such a manner that they do not share a cell with adults. When there is just one person under 18 in the arrest house, fulfilling the demand for separation means that this person will be alone in the cell. Even in cases wherein there is a separate unit for children at an adult institution, as with Viru Prison, the arrangements are not without problems. Being placed in the same prison where adult criminals are serving their punishment creates a self-image of being one of the prisoners. Such a 'prisoner' identity stigmatises children and has an important negative effect on their personal development.

The conditions in the youth department of Viru Prison are sufficient to guarantee prisoners' well-being: the living conditions and equipment are good, rooms are clean, and the boys are placed there alone or in pairs. Every room has a water top and toilet separate from the rest of the space. There are nicely equipped classrooms, rooms for handicrafts, and a library, and well-appointed sports grounds exist outside the building, suitable for playing football and basketball. There is a problem only in that most rooms for leisure activities are used as motivation tools; for instance, when the boys behave well, they can go out and play football, or go to the library and get a book, or use the room for handicrafts. The reason for not using the sports grounds and equipment on an everyday basis, according to the staff, is that, because, prisoners are aggressive and break the equipment or steal materials, their access to all these good opportunities is limited. Staff members also mentioned that boys at the prison are full of energy and for them it would be better to work somewhere in the forest or in agriculture, where they can channel that energy into a positive activity. But because the boys are aggressive and break the rules, damaging the equipment etc., they are locked up in their cells for days. This forms a vicious circle: the more the boys are closed away in their rooms, the more violent they are. International research shows that misconduct, especially violent misconduct, is a natural reaction to the deprivation, stress, and oppression following incarceration<sup>\*29</sup> and is more commonplace in young inmates than in the general population<sup>\*30</sup>.

<sup>24</sup> D. Ezzy. *Qualitative Analysis: Practice and Innovation*. London: Routledge 2002.

<sup>25</sup> The TWELVE handbook is available in English at [http://www.defenceforchildren.it/files/training\\_module\\_twelve.compressed.pdf](http://www.defenceforchildren.it/files/training_module_twelve.compressed.pdf) (most recently accessed on 20 September 2017).

<sup>26</sup> Until 2015, there were two special schools in Estonia, one for male and the other for female young people with behavioural problems. In that year, the two special schools were merged into a single institution and a name change was made accordingly. Despite the closed character of the institution, which carries out 24/7 supervision of residents, the treatment emphasises rehabilitation through education and therapy.

<sup>27</sup> At the Children's Shelter in Tallinn; see [http://lasteturva.ee/?page\\_id=160&lang=et](http://lasteturva.ee/?page_id=160&lang=et) (in Estonian) (most recently accessed on 20 September 2017).

<sup>28</sup> More about the Estonian system can be found in the national report for 2014.

<sup>29</sup> See I. Lambie, I. Randell (see Note 7); A. van der Laan, V. Eichelsheim. Juvenile adaptation to imprisonment: Feeling of safety, autonomy and well-being, and behaviour in prison. – *European Journal of Criminology* 10 (2013) 4, pp. 424–443.

<sup>30</sup> C.M. Anderson, A.S. Ranckin. The relation between argumentativeness, verbal aggressiveness, and communication satisfaction in incarcerated male youth. – *The Prison Journal* 87 (2007) / 3, pp. 328–343. – DOI: <http://dx.doi.org/10.1177/0032885507304433>.

Limitation of physical well-being is not the worst thing that can happen to young people in prison. Worse is limitation of contact with the outside world. Young prisoners in Estonia are much more isolated than their peers in other EU countries. One of the possibilities for maintaining contact with the community involves using volunteers, NGOs, and other organisations in the rehabilitation process. In comparison to Italy, Spain, or Belgium, where volunteers play a significant role in the process of rehabilitation of young people at youth detention centres<sup>\*31</sup>, in Estonia the non-governmental sector has little part in the rehabilitation process of young offenders. In Estonian prisons, all rehabilitation work is done by official staff. The Council of Europe and international organisations emphasise that social contacts with family and the outside world for young people deprived of their liberty constitute one of the most important rights<sup>\*32</sup>. The literature pays attention to the fact that in correctional institutions young people communicate more with peer offenders, with communication with non-delinquent youth being almost entirely absent. This all rather supports antisocial behaviour<sup>\*33</sup>. The problem could be lessened via intensive communication of imprisoned children with educators, psychologists, social workers, other staff, family members, and volunteers. Good practice is followed when educators or other contact persons spend time with the children, participating in and sometimes organising their activities (cooking, reading, playing games, working on homework, etc.). Such a model of communication is already used by the special school in Estonia, while the youth prison still needs to make some changes in this respect.

The rehabilitation work at prisons focuses not so much on the child's well-being and rights as on the safety of society. That is why the emphasis is on risk assessment for the child. On the basis of this risk assessment, a rehabilitation plan is prepared for every prisoner that includes co-operation with the local authorities and with the child's family (or the institution taking the family's place). At the time of the research, there was a plan to use multidimensional family therapy for young prisoners if possible<sup>\*34</sup>.

All juveniles in prison are obliged to attend school; therefore, the child's right to education is honoured in Estonian prisons. Additionally, as the head of the department stated when interviewed, also vocational training in cooking, room-service work, soldering, and carpentry is available to the young prisoners.

The situation in special educational institutions is different. The physical environment is not so closed: children's isolation here means, first of all, permanent supervision by staff members and not closed rooms. Pupils at special schools can have much more contact with the outside world, and the outside world has more access to the institution. This includes volunteers and various NGOs and professionals working for children's well-being.

From the conversations with children in prison and at the special school, we could learn that they are informed about human rights; however, this is quite an abstract notion for them, one they cannot tie in with their day-to-day life. In particular, children are not always informed about their right to complain<sup>\*35</sup>. If they are told of the right to complain, the procedure described requires filing a written complaint. Although formally the possibility to complain exists, presenting a written complaint necessitates quite a high level of literacy and other skills, which these children do not possess.

When a child writes a letter of complaint, it will be directed to the staff of the closed institution. Children are not informed about the option of complaining to independent organisations such as the children's ombudsman or child-protection entities. According to the staff, the reason for the procedure utilised is that the staff members have real power to resolve the problem and correct mistakes at the institution. Nonetheless, children do not complain, because they are afraid of the staff members who have power to punish them and even more of other children – because the reason for the complaint is often violence between inmates.

Often children do complain about small things such as food that they can control. For example, children in prison complained that the portions are too small / are not enough for them or they wish for more desserts or sweet items. However, rules and regulations established by the institution that limit children's rights – for example, restricting their access to fresh air, to physical exercises in the yard, to engaging

<sup>31</sup> For more information, see the national reports, which are available via <http://www.defenceforchildren.it/risorse/pubblicazioni/134-twelve-rapporti-nazionali.html> (most recently accessed on 20 September 2017).

<sup>32</sup> See U. Kilkelly, *Children's Rights and the European Committee for the Prevention of Torture*. Council of Europe 2012.

<sup>33</sup> I. Lambie, I. Randell (see Note 7).

<sup>34</sup> Today, both prisons and the special school use multi-dimensional family therapy (MDFT), which serves as one of the best-working methods for rehabilitation of children deprived of liberty.

<sup>35</sup> In the statutes of Maarjamaa Hariduskollegium, for example, there is no language about a right of the pupil to present complaints.

in sport, to contact with volunteers from outside the prison, and to obtaining information from different sources – are perceived by the children as givens and are taken for granted as being part of the institution's regime. Therefore, one cannot take lack of inmate complaints as an adequate indication of the extent to which children's rights are abridged by the institution.

As was mentioned above, alongside protection and provision, participation is one of the most important of children's rights. However, children in detention are still highly limited in respect of exercising this right. The UNCRC's Article 12 (on the right to be heard) and, in combination with it, some connected articles – e.g., those on the right to freedom of expression (Art. 13); freedom of thought, conscience, and religion (Art. 14); freedom of association (Art. 15); access to information and materials from diverse sources (Art. 17); rest and leisure (Art. 31); and challenging the legality of the deprivation of liberty (Art. 37) – encompass the right of the child to participation. Without really carrying these rights through into practice in the day-to-day life of every child, we cannot hope that one day we will have a self-conscious, responsible adult<sup>\*36</sup>. Therefore, when today we put a child behind bars, we have to think very carefully about the opportunities for participation. The highly structured and restrictive environment of prisons and other closed institutions that give too little opportunity to an individual to participate in decision-making rather cramps the development of an independent and responsible person<sup>\*37</sup>. Building a system that will respect children's rights and ensure each child's development and rehabilitation is not possible without competent specialists. A specialist working with children in closed institutions has to have solid knowledge of children's development, social pedagogy, communication skills, and both national and international law. Our research revealed that some practitioners doubted whether young offenders deserve the same rights as other children. This finding demonstrates the need for training in the provisions of the UNCRC for specialists working with children. We also concluded that the principles of the convention should be introduced and explained to all actors involved in the process of rehabilitation of young offenders, including their teachers, parents or the equivalent, and the children themselves.

The importance of children's participation is not only required by the UNCRC but also perceived by the experts as an important part of the rehabilitation process. The interviews with practitioners highlighted the importance of interpersonal communication. According to the specialists, there is need to stop the 'one-direction communication' in which adults, especially teachers, lawyers, or police officers, simply declare their thoughts and do not listen to the child. Many practitioners, though, brought up as a problem also the low level of children's communication skills and self-expression ability. International research too emphasises the importance of interactions within the correctional institutions for better adaptation of young offenders, with good relations with staff members being cited as especially important<sup>\*38</sup>. To exercise their right to participate and to be heard, children should be assisted in development of their interpersonal communication and self-expression skills.

The specialists stressed that a juvenile justice system shall focus on solving problems, not just punishing young offenders. A truly caring professional should not work routinely and has to remain aware that no two cases are similar – every case and every child is unique and requires unique understanding. Focusing on each child's own story and on telling one's story should be everyday practice in working with young offenders. This approach would guarantee respect for children's rights, including the best interests of the child, with attention to the right to participate, that to be heard, and that to be treated with dignity and respect.

## 5. Conclusions

Estonia was eager to sign on to international acts and standards, but changing the system requires time and effort. Participation in the action-grant work gave us good opportunities to engage with professionals both in Estonia and in partner countries in the EU and discuss such important topics as working with young offenders from the angle of a rights-based approach.

<sup>36</sup> See, e.g., Tom D. Campbell (Note 8). The author analyses the connections among three facets of the rights of the child: rights as a human being, as a child or young person in the here and now, and as a future adult.

<sup>37</sup> J. Lane et al. Adult versus juvenile sanctions: Voices of incarcerated youths. – *Crime & Delinquency* 48 (2002) / 3, pp. 431–455. – DOI: <http://dx.doi.org/10.1177/0011128702048003004>.

<sup>38</sup> A. van der Laan, V. Eichelsheim (see Note 29).

Prison is the worst place for a child to be and, therefore, is to be used as a last resort. Even when incarceration of a child is inevitable, it should be done in special institutions. Placing children in a large 'adult' institution such as a prison stigmatises them and creates a negative self-image that leads to secondary delinquency and re-offending. Therefore, having special separate institutions for children not only is in the best interests of the child but serves the interest of society at large.

When young offenders are placed in special separate institution for children, more opportunities are created for the child to have contact with the outside world. This, again, is important for guaranteeing other rights, such as that to being treated with dignity, all in a manner that takes into account the needs of persons his or her age.

It is important to stress also that respect for children's rights demands more than ratifying the UNCRC and other legal instruments. Equally important is that the principles of the convention should be introduced and explained to all actors involved in the process of rehabilitation of young offenders, including their teachers, parents, and the children themselves. Needless to say, international and national standards should be individual-centred and followed more flexibly.